

GEORGE LEE HASKINS: HISTORIAN OF THE LAW

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George Lee Haskins may be said to be the Peter Edward Rose of legal history.¹ At first blush, the comparison may not seem entirely apt.² Mr. Haskins and Mr. Rose work in very different fields, and their personalities seem dissimilar. What links them are early aptitude, remarkable durability, and sustained excellence. Each entered his chosen discipline as a very young man, each hit the ground running, and each has been running ever since.

Mr. Rose was only twenty-one when, in 1963, he started playing for the Reds of Cincinnati.³ Mr. Haskins was even more of a prodigy: he reached the majors, playing for the Crimson of Harvard, when he was twenty. The year was 1935. Harvard's Phi Beta Kappa chapter, which had just begun a program of fostering first-rate undergraduate scholarship, selected George Haskins' senior paper, *The Statute of York and the Interest of the Commons*, as one of a series of undergraduate essays chosen for publication "as an indication of the best sort of work done in college and as a reward for distinctive originality of thought and research."⁴ In his preface, Haskins acknowledged an "especial debt of gratitude" to his great mentor, Charles H. McIlwain, who had suggested the topic and counseled him along the way.⁵ But the work was indubitably Haskins' own, stamped with the confident authority of a young scholar who knew that he had reached firm ground where his elders had gotten lost in a bog:

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¹ This brief tribute to Mr. Haskins addresses his principal works in legal history, not his writings in such other fields as property and trusts.

² The limits of the comparison of Mr. Haskins and Mr. Rose must be acknowledged. It is not contended that Mr. Haskins, in emulation of Mr. Rose, has written more pages of legal history than any previous scholar. Conversely, it is not contended that Mr. Rose, or indeed any other great hitter, has matched Mr. Haskins in consistently hitting for power every time he comes to the plate.

³ See 2 WHO'S WHO IN AMERICA 2791 (43d ed. 1984) (stating that Mr. Rose was born April 14, 1942 and began playing for the Reds in 1963); accord THE BASEBALL ENCYCLOPEDIA 1345 (J. Reichler ed. 1985). But see WHO'S WHO IN PROFESSIONAL BASEBALL 799 (G. Karst & M. Jones, Jr. eds. 1973) (stating that Peter Rose was born April 14, 1941).

⁴ G. HASKINS, *THE STATUTE OF YORK AND THE INTEREST OF THE COMMONS* vii (1935).

⁵ *Id.* at x.

One problem of great importance arises in connection with the position of the representative burgesses and knights of the shire in parliaments of the thirteenth and fourteenth centuries. Modern scholars have done much to make clear the exact nature of the activities of the commons in parliament, but several anomalies of historical criticism along this line still remain. Chief among these . . . is the interpretation given to the Statute of York of 1322. At one time it was customary to say of the statute, as Stubbs did, that it meant that the full cooperation of all the estates in parliament was "necessary for the establishment of any measure touching the king and the realm." . . . The assertion, in other words, has been that the Statute of York guaranteed to the 'commons' the right of full and active participation in legislation, when only thirty years before they had simply been giving their consent to grants of extraordinary taxation. Such an assertion in itself is rather remarkable, but when coupled with an understanding of the actual role played by parliament at that time and with a knowledge that no change of importance occurred in procedure or function after 1322, we are forced to conclude that the statute's elaborate provisions were little more than regal or chancery verbiage, or that they warrant an entirely different interpretation.

. . . .

. . . It will be the object of this monograph to show that no new privilege was given and no right taken away by the enactment; that, on the contrary, it established what, in the words of the statute, had been "before accustomed." *Natura non facit saltus*, and parliamentary history in the fourteenth century is rarely an exception.⁶

Haskins' strong first book led, not surprisingly, to an appointment as a Junior Fellow of Harvard's Society of Fellows. This provided him with the opportunity to expand his study of the development of parliamentary institutions—the fruits of this study were presented in his Lowell Lectures in 1939. Military and government service prevented completion of the work until after the war, and after Haskins had moved from Harvard to the University of Pennsylvania. The publication, in 1948, of *The Growth of English Representative Government* marked the thirty-three-year-old scholar as one of the senior Americans laboring in the vineyard of English legal history. Haskins' graceful prose put permanently to rest the notion that legal history was required to be tedious:

⁶ *Id.* at 7-9 (footnotes omitted).

Most people, when they think of parliament or the house of commons, conjure up to the mind's eye the spectacle of the stately neo-Gothic Houses of Parliament on the Embankment of the Thames. But it is not with buildings such as these that the medieval parliament was associated, for they date only from the second quarter of the nineteenth century. Shadowed by those Houses, and by the towering Abbey of Westminster, lies the long bulk of gray-black stone known as Westminster Hall. No one edifice typifies so well the continuity of the English government; few places have been so intimately associated with its history. Its dark roof has rung with the acclamations that hailed many an heir to the throne; its somber flags have known the tread of throngs who sought to pay last homage to a sovereign king. It was here that the royal courts of justice had their first beginnings. Here the king's High Court of Parliament was convened; here, until the eighteenth century, the great trials for high treason were held. . . .

Could we turn back the centuries in the glass of time, it would be a very different spectacle we should see at Westminster on a winter's morning in the opening years of the fourteenth century. No more the tapering pinnacles and crockets of neo-Gothic, nor the massive grays of Whitehall; instead, low-lying marshes and pasture land, flooded by a swollen Thames, sullenly resenting the massive walls and bulwarks of the royal palace on the Isle of Thorns. It is a wide and muddy Thames that runs with the salt tide by the palace, by the long staple of the woolmerchants, and by the gleaming white of the sumptuous Abbey church hard by. A slow river, with many a small fishing craft and much river traffic, running by the orchards of the Strand, past the river Fleet down to London City, with its red roofs, its lead-clad steeples, its hostels, its monestaries, its great cathedral church of St. Paul.

It is not to London City that we shall look on this early morning, but to the bustle and activity about the royal palace and the Great Hall at Westminster. It is Sunday, and the bells and chimes cannot be stilled; for King Edward I has returned from the North to consult with his magnates and the princes of the Church from all England, summoned by royal writ to attend his parliament at Westminster.⁷

In the years that followed, Haskins turned his attention to a new

⁷ G. HASKINS, *THE GROWTH OF ENGLISH REPRESENTATIVE GOVERNMENT* 4-5 (1948) (footnotes omitted).

and equally demanding challenge—making sense out of the development of legal institutions in his own land. The product of these labors was *Law and Authority in Early Massachusetts*, published in 1960. In his preface, Haskins tells us something of what underlay this masterly work:

American legal history has only begun to receive from scholars the attention it deserves. There is no history of American law corresponding to the works of Maitland and Holdsworth for England, and this lack has long been a subject of lament on the part of those who have appreciated that our legal traditions are at least as much a part of American culture as are our political traditions. . . .

The beginnings of American law are to be sought in the colonial period, the formative era during which the needs of a new civilization molded traditional ideas and practices into thirteen distinct legal systems. The search, however, is neither easy nor simple. The colonies differed greatly in background, in the conditions of settlement, and in the forms of government they adopted. Moreover, the social and political development of each proceeded, for the most part, along different lines. Hence, it is essential that the character and growth of the several colonial legal systems be studied individually and be separately described. An eminent legal historian [Plucknett] has declared: "Not until we have a series of state histories by authors solidly grounded in English legal history and in their own state archives, and treating the history of every state with minute accuracy and exhaustiveness, can any attempt be fruitfully made to write American legal history as a whole. When each state has had its Reeves, then in the fulness of time there may come a Maitland."⁸

Respecting Plucknett's caveat that one who seeks to master American legal history should be "solidly grounded in English legal history," Haskins thus emerged as a leading figure in both fields.

It is our great good fortune that Justice Frankfurter managed to persuade George Haskins to perform a further, and immense, service to American legal history. Permitting the Justice's importunings to overcome his own preferences, Haskins agreed to assume a portion of the burden of chronicling the Marshall Court. The result is volume two of the Holmes Devise History of the United States Supreme Court—*The Foundations of Power: John Marshall, 1801-15*.⁹ Future students of

⁸ G. HASKINS, *LAW AND AUTHORITY IN EARLY MASSACHUSETTS* vii-viii (1960) (footnotes omitted) (quoting Plucknett, *Book Review*, 3 *NEW ENG. Q.* 574, 576-77 (1930)).

⁹ G. HASKINS, *FOUNDATIONS OF POWER: JOHN MARSHALL, 1801-15* (PART

the decisive first years of John Marshall's stewardship will stand upon Haskins' shoulders.¹⁰

Haskins' arrival at emeritus status curtails his teaching, to the detriment of law students at Penn. But it frees him up for further scholarship—the enlargement and refinement of the extraordinary corpus of legal history which is his enduring monument. George Haskins' achievement rests on his rigorous fidelity to his own first principles:

The task of the historian of law is not merely one of recounting the growth and jurisdiction of courts and legislatures or of detailing the evolution of legal rules and doctrines. It is essential that these matters be related to the political and social environments of particular times and places. Broadly conceived, legal history is concerned with determining how certain types of rules, which we call law, grew out of past social, economic, and psychological conditions, and how they accorded with or accommodated themselves thereto. The sources of legal history therefore include not only the enactments of legislatures and the decisions of courts and other official bodies, but letters, diaries, tracts, and the almost countless varieties of documents that reveal how men lived and thought in an earlier day. Law is not simply a body of rules for the settlement of justiciable controversies; law is both a product of, and a means of classifying and bringing into order, complex social actions and interactions. As Savigny has written, the phenomena of law, language, customs, government are not separate: "There is but one force and power in a people, bound together by its nature; and only our way of thinking gives these a separate existence."¹¹

ONE) (2 HISTORY OF THE SUPREME COURT OF THE UNITED STATES) (1981).

¹⁰ This writer's appraisal of FOUNDATIONS OF POWER: JOHN MARSHALL, 1801-15, is to be found in Pollak, *Marshall and the "Campaign of History"* (Book Review), 131 U. PA. L. REV. 475 (1982).

¹¹ G. HASKINS, *supra* note 8, at viii (footnotes omitted) (quoting F.C. VON SAVIGNY, VOM BERUF UNSRER ZEIT FÜR GESETZGEBUNG UND RECHTSWISSENSCHAFT 8 (1814)).